



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a Claim Against the Dealer Bond
of GT Nelson, LLC, d/b/a Soldiers Grove Truck
and Auto

Case No. TR-14-0029

FINAL DECISION

On September 29, 2014, Douglas Gnewikow filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of GT Nelson, LLC, d/b/a Soldiers Grove Truck and Auto (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Crawford County Independent, a newspaper published in Crawford County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 29, 2014. No additional claims were filed. The claim was forwarded by the Department to the Division of Hearings and Appeals.

On January 26, 2015, a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(4)(a) was issued. On February 19, 2015, Attorney Kevin M. Connelly, on behalf of GT Nelson, LLC, d/b/a Soldiers Grove Truck, filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to Wis. Admin. Code § Trans 140.26(6), a hearing in this matter was conducted on March 23, 2015, in Viroqua, Wisconsin. Mark F. Kaiser, Administrative Law Judge, presided.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

GT Nelson, LLC, d/b/a Soldiers Grove Truck and Auto, by

Attorney Kevin M. Connelly
201 South Main Street
Westby, WI 54667

Douglas Gnewikow, by

Attorney Benjamin J. Quackenbush
101 West Oak Street
P. O. Box 349
Sparta, WI 54656

Western Surety Company
PO Box 5077
Sioux Falls, SD 57117

The disputed issues in this matter are whether the Dealer informed Douglas Gnewikow that the truck he purchased could not be titled or registered in Wisconsin and whether the transaction was conducted through the dealership. The findings in the Preliminary Determination were that the sale was through the dealership and that the Dealer did not disclose to Mr. Gnewikow that the vehicle could not be titled and registered in Wisconsin based on its history of having been issued a junk title in North Carolina. For the reasons set forth below the findings in the Preliminary Determination have been adopted into this Final Decision.

Findings of Fact

1. Guy Nelson (Nelson) owns GT Nelson, LLC, d/b/a Soldiers Grove Truck and Auto. GT Nelson, LLC, d/b/a Soldiers Grove Truck and Auto (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 47251 Torgerson Road, Soldiers Grove, Wisconsin.
2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since November 24, 2009 (Bond # 69806463 from Western Surety Company).
3. On August 22, 2013, Douglas Gnewikow (Gnewikow) purchased a 2008 Ford 250 truck, vehicle identification number (VIN) 1FTSW21R181EC56081, from the Dealer for \$12,500. No purchase contract for the sale was executed. As documentation for the purchase price of the vehicle Gnewikow submitted a copy of a bill of sale from the Dealer and his cancelled check. Gnewikow also submitted a Wisconsin Buyers Guide which the Dealer had prepared for the vehicle.
4. Gnewikow did not receive a title or plates for the vehicle. He initially drove the vehicle with dealer plates from the Dealer. After 35 days the Dealer asked for the plates back. On April 22, 2014, Gnewikow filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint searched the Department's records and found no record of the vehicle Gnewikow had purchased.

5. The investigator obtained a Carfax report for the vehicle. The Carfax report revealed that the North Carolina Motor Vehicle Department had issued a junk title for the vehicle on August 12, 2009. Pursuant to Wis. Admin Code § Trans 149.10(3), a motor vehicle that has been titled as junk in another jurisdiction cannot be titled or registered in Wisconsin. If Gnewikow cannot title or register the vehicle he purchased from the Dealer, he will not be able to lawfully operate it on public roadways or sell it.

6. The investigator contacted Nelson regarding Gnewikow's complaint. According to the investigation report, Nelson claimed that he told Gnewikow that he would not be able to title the vehicle in Wisconsin. When the investigator informed him that a salvage dealer license is required to sell a junk vehicle, Nelson reportedly responded that the transaction was private, not a sale through the dealership.

7. The investigator was unable to resolve the complaint and on September 29, 2014, Gnewikow filed a claim against the surety bond of the Dealer. The claim is in the amount of \$12,500.00, the purchase price of the vehicle.

8. Contrary to Nelson's contentions, the documentation submitted by the Department supports the determination that the sale of the vehicle to Gnewikow was through the dealership. As a retail sale by a licensed motor vehicle dealership, the Dealer was required to furnish a motor vehicle purchase contract complying with the requirements of Wis. Stats. § Trans 139.05, to Gnewikow. The Dealer failed to furnish a motor vehicle purchase contract to Gnewikow. The Dealer's failure to furnish a motor vehicle purchase contract is a violation of Wis. Admin Code § Trans 139.05.

9. Wis. Admin Code § Trans 139.04(5)(c)1 requires a motor vehicle dealer to conspicuously disclose on a motor vehicle purchase contract for the sale of a junk vehicle a statement that the vehicle is "junk" and may never be retitled. By not completing a motor vehicle purchase contract, the Dealer failed to disclose that the vehicle had been titled in North Carolina as "junk" and, therefore cannot be retitled. The Dealer's failure to disclose that the vehicle had been issued a junk title in North Carolina is a violation of Wis. Admin Code § Trans 139.04(5)(c)1.

10. Gnewikow sustained a loss of as a result of the Dealer's failure to disclose the vehicle's junk history and that the vehicle could not be titled in Wisconsin. Because the vehicle's history was not properly disclosed, Gnewikow purchased a vehicle he cannot lawfully operate on public roadways or sell. The Dealer's violation of Wis. Admin Code § Trans 139.04(5)(c)1 is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

11. Gnewikow filed a bond claim within three years of the ending date of the period the Western Surety Company bond was in effect and it is, therefore, a timely claim.

12. The loss sustained by Gnewikow was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Gnewikow submitted documentation to support a claim in the amount of \$12,500.00, the purchase price of the vehicle.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)]*.

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. According to the investigator's report, the Dealer contended that the sale to Gnewikow was a private sale, not one made through the dealership. The check purchasing the vehicle from Ohio Truck Parts was written from the Dealer's account and the Dealer completed a Wisconsin Buyer Guide for the vehicle. This evidence strongly suggests that it was the intention of the Dealer to sell the vehicle through the dealership. The Dealer's subsequent sale of the vehicle to Gnewikow using a simple invoice rather

than the required motor vehicle purchase contract appears to be based on the Dealer's recognition that the vehicle could not lawfully be sold by a licensed motor vehicle dealer. The Dealer cannot evade the Department's regulations of motor vehicle dealers by simply classifying an unlawful sale as a private sale.

Wis. Admin Code § Trans 139.04(5)(c)1 requires a motor vehicle dealer to conspicuously disclose on a motor vehicle purchase contract for the sale of a junk vehicle a statement that the vehicle is "junk" and may never be retitled. According to the investigator's report, the Dealer claimed he gave Gnewikow paperwork showing that the vehicle could not be titled in Wisconsin. This claim is not credible because it is unlikely that Gnewikow would have purchased the vehicle if he understood that he could not lawfully operate the vehicle on public roadways or sell it. Wis. Admin Code § Trans 139.04(5)(c)1 requires a motor vehicle dealer to conspicuously disclose in writing on the motor vehicle purchase contract that a vehicle is junk and can never be retitled. This requirement eliminates any dispute whether a vehicle's condition was clearly disclosed to a buyer.

An additional piece of circumstantial evidence supporting the determination that the Dealer did not clearly disclose the vehicle's history to Gnewikow is the existence of the completed Wisconsin Buyers Guide. Wis. Admin Code § Trans 139.04(6)(c)6 exempts motor vehicle dealers from the requirements of displaying Wisconsin Buyers Guides on used vehicles offered for sale if there is a written statement disclosing that the vehicle is "junk" conspicuously displayed on the vehicle. The fact that a Wisconsin Buyers guide completed for the vehicle implies that the Dealer did not disclose that the vehicle was junk.

At the hearing, the Dealer presented witnesses who testified that it was common knowledge that the truck purchased by Gnewikow could not be titled in Wisconsin and that Gnewikow surely purchased the truck with this knowledge. Guy Nelson testified that he originally purchased the truck under the assumption he could repair it and that it then could be titled and registered in Wisconsin. After being informed that the fact that the truck had been issued a junk title in North Carolina permanently precluded it from ever being titled in Wisconsin, Nelson drove it as a personal vehicle for several years and also used it in truck-pulling contests. To operate the vehicle on public roadways, Nelson put dealer plates on it. He also completed a Wisconsin Buyers Guide for the vehicle and displayed it to make it appear that the vehicle was part of his dealership's inventory.

Gnewikow liked the truck and approached Nelson about buying it. Gnewikow admitted that he knew there was a problem with the title for the vehicle but claimed that Nelson told him he was working on getting a title for the truck. Both Gnewikow and Nelson testified that there was a discussion about finding a similar truck without a junk title and swapping that truck's VIN for the truck purchased by Gnewikow. Both Gnewikow and Nelson claimed the scheme was the other's idea. Gnewikow's bond claim comes down to whether the sale was through Nelson's dealership and what Nelson disclosed to Gnewikow prior to the sale.

The testimony at the hearing cast some doubt on whether Gnewikow is the innocent victim he claims to be. However, as a licensed motor vehicle dealer, Nelson is subject to regulation by the Department. Nelson purchased the truck with a dealership check, at an auction that he was able to bid based on his dealer's license, Nelson's dealer plates were on the vehicle, and a completed Wisconsin Buyer Guide was displayed on the vehicle. Clearly, Nelson considered the truck to be part of his dealership inventory to the extent it served his purposes. As a licensed motor vehicle dealer, Nelson was required to disclose the truck's junk history to prospective buyers in writing. Nelson failed to do so. The requirement that the disclosure be in writing is to ensure that there is no doubt that the appropriate disclosure was made and to avoid contradictory versions of a transaction like occurred in this case.

Accordingly, with respect to Gnewikow's claim, the Dealer violated Wis. Admin Code § Trans 139.04(5)(c)1. A violation of Wis. Admin Code § Trans 139.04(5)(c)1, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1 as one of the violations upon which a claim against a motor vehicle dealer's bond can be based. Gnewikow sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Gnewikow claim arose on August 22, 2013, the date he purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on November 24, 2012. The claim arose during the period covered by the surety bond.

2. On September 29, 2014, Gnewikow filed a claim against the motor vehicle dealer bond of the Dealer. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Cod, the claim is timely.

3. Gnewikow's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Gnewikow has submitted documentation to support a claim in the amount of \$12,500.00. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Douglas Gnewikow against the motor vehicle dealer bond of GT Nelson, LLC, d/b/a Soldiers Grove Truck and Auto, is APPROVED in the amount of \$12,500.00. Western Surety Company shall pay Mr. Gnewikow this amount for his loss attributable to the actions of GT Nelson, LLC, d/b/a Soldiers Grove Truck and Auto. Upon receipt of the payment, Mr. Gnewikow shall surrender possession of the vehicle to Western Surety Company.

Dated at Madison, Wisconsin on April 22, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.